

NOTICE OF AGENCY RULE-MAKING ADOPTION

AGENCY: Department of Marine Resources

CHAPTER NUMBER AND TITLE: 11.22 2012-13 Closures (14) Gouldsboro & Dyer Bay (15) Damariscotta River and (16) Somes Sound. Emergency regulations

ADOPTED RULE NUMBER:

CONCISE SUMMARY:

The Commissioner adopts this emergency rulemaking for the implementation of a conservation closure located in Gouldsboro & Dyer Bays, Damariscotta River and Somes Sound in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2012/2013 fishing season in these areas may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. A significant immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in Gouldsboro & Dyer Bays, Damariscotta River and Somes Sound as authorized by 12 M.R.S.A. §6171(3).

EFFECTIVE DATE: January 21, 2013

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Rule-Making Fact Sheet

(5 M.R.S., §8057-A)

AGENCY: Department of Marine Resources

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CHAPTER NUMBER AND RULE: Chapter 11.22 2012-13 Closures (14) Gouldsboro & Dyer Bays
(15) Damariscotta River (16) Somes Sound. Emergency regulations

STATUTORY AUTHORITY: 12 M.R.S.A. §6171(3)

DATE AND PLACE OF PUBLIC HEARING: None, Emergency rulemaking

COMMENT DEADLINE: None, Emergency rulemaking

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE:

The Commissioner adopts this emergency rulemaking for the implementation of a conservation closure located in Gouldsboro & Dyer Bays, Damariscotta River and Somes Sound in order to protect Maine's scallop resource due to the risk of unusual damage and imminent depletion. Scallop populations throughout the state are at extremely low levels. The Department is concerned that unrestricted harvesting during the remainder of the 2012/2013 fishing season in Gouldsboro & Dyer Bays, Damariscotta River and Somes Sound may deplete a severely diminished resource beyond its ability to recover. Continued harvesting may damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reducing the broodstock essential to a recovery. A significant immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion. For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery in Gouldsboro & Dyer Bays, Damariscotta River and Somes Sound as authorized by 12 M.R.S.A. §6171(3).

ANALYSIS AND EXPECTED OPERATION OF THE RULE:

The adopted rules seek to conserve the scallop resource for utilization in the future. The rule is intended to have a long-term positive impact on the scallop resource to benefit future harvesters and the wholesale and retail seafood industry.

FISCAL IMPACT OF THE RULE:

Enforcement of this amendment would not require additional activity in this agency. Existing enforcement personnel will monitor compliance during their routine patrols.

DEPARTMENT OF MARINE RESOURCES

Chapter 11 Scallops

11.22 2012-13 Closures

It shall be unlawful to fish for, take, or possess scallops taken by any method within any of the following closed areas, except for Mussel Ridge (6) which shall be open during the month of December in accordance with the dates specified in section 11.09. All directions are relative to True North (not magnetic).

Transiting exception:

Any vessel possessing scallops onboard, may transit these closed areas, only if the vessel has all fishing gear (dredges, drags) securely stowed. Securely stowed shall mean the main wire shall not be shackled or connected to the dredges or drags, and the towing swivel will be at block or on the winch.

(1) Upper Chandler Bay

Northern boundary: South of a line starting at the Roque Island Cable Area between Jonesport and Roque Island.

Southern boundary: North of a line starting at the most southeastern tip of Sandy River Beach to the most southern tip of Bar Island, continuing to the most southern tip of Ballast Island; then continuing to the most southern tip of Bonney Point, Roque Island.

(2) Mud Hole Channel

Northern boundary: South of a line drawn from the most eastern tip of Mud Hole Point, Great Wass Island to the most western tip of Crow Point, Head Harbor Island.

Southern boundary: North of a line from the most eastern tip of Little Pond Head, Great Wass Island to the most southern tip of Freeman Rock, then continuing on to the most southern tip of Mistake Island, continuing from the most eastern tip of Mistake Island to the most southern tip of Steele Harbor Island; then from the northern end of Great Herring Cove, Steele Harbor Island to the most southern tip of Man Island.

(3) Moosabec Reach

Eastern boundary: West of a line drawn from the most eastern tip of Perio Point, Beals to OW Look's wharf, Jonesport.

Western boundary: East of a line drawn from the most western tip of Macks Point, located north of Mill Pond cove, Beals to the end of the dock on Lobster Lane, Jonesport.

(4) Inner Harbor/Deep Hole

West of a line drawn from the most western point of Whitmore Neck, Deer Isle due True North to the South shore of Mountainville, Deer Isle at Latitude 44 12.407 N Longitude 068 38.819 W.

(5) Blue Hill Salt Pond

All waters of the Blue Hill Salt Pond.

(6) Mussel Ridge

Eastern boundary: West and South of a line drawn from the most eastern tip of Ash Point, South Thomaston at Latitude 44 02.805 N Longitude 069 04.393 W to RW "PA" Mo (A) GONG at; then continuing southwest to the northern tip of Two Bush Island.

Western boundary: North of a line starting at the northern end of the Rackliff Island causeway then following the shore to the most southern point of Rackliff Island continuing to the most southern point of Norton Island and then continuing to the most southern point of Whitehead Island then to the southern end of Two Bush Island.

(7) Ocean Point

West of a line drawn from Emerson Point, at the southern most tip of Ocean Point, Boothbay at Latitude 43 48.852 N Longitude 069 35.454 W, to the most northern tip of Fisherman Island, then continuing to R N "8" AND East of a line draw from R N "8" to the most southwestern tip of Ocean Point at Latitude 43 48.874 N and Longitude 069 36.332 W.

- (8) Eastern Casco Bay
Eastern boundary: West and North of a line drawn from the most southern tip of Gun Point, Harpswell, to G "3", South of Round Rock; continuing in a southwesterly direction to R N "4" at Drunkers Ledges.
Western boundary: East and North of a line draw from R N "4" at Drunkers Ledges to the most southern tip of Jaquish Island; then east of a line from the most northwestern tip of Jaquish Island at Latitude 43 42.950N Longitude 70 00.137W to the most southeastern tip of land along Jaquish Gut at Latitude 43 43.043N Longitude 70 00.128W.
- (9) Hussey Sound
Northern boundary: South of a line draw from the most northern tip of Diamond Cove, Great Diamond Island at Latitude 43 41.047 N Longitude 070 11.311 W, East to the most western top of Long Island at Latitude 43 41.011 N Longitude 070 10.369 W.
Eastern boundary: West of a line drawn from the most southern tip of Jerry Point, Long Island to the most northeastern tip of Peaks Island at Latitude 43 39.801 N 70 10.622 W.
Southern Boundary: North of a line draw from the most northwestern tip of Peaks Island at Latitude 43 40.403 N 070 11.237 W to the eastern shore of Great Diamond Island Latitude 43 40.547 N Longitude 070 11.528 W.
- (10) Inner Blue Hill Harbor
West of a line drawn from the most western point of Sculpin Point, Blue Hill to the closest point of land on Parker Point, Blue Hill Neck.
- (11) Muscongus Area:
North and east of a line beginning at the intersection of Latitude 43° 55' N on Pemaquid Neck (just north of Brown's Cove, Bristol), and following this latitude to a point directly South of Marshall Point, Port Clyde at Latitude 43 54.84 N Longitude 69 15.60 W then due North to the most southern tip of Marshall Point, Port Clyde.
- (12) Southeast Harbor:
North of a line starting at the most southwestern tip of Stinson Neck, Deer Isle running west to Coles Point on Whitmore Neck, Deer Isle; this includes all of Southeast Harbor.
- (13) East Moosabec Reach:
East of the Jonesport-Beals Island bridge and west of a line starting at the western end of the breakwater in Sawyer's Cove to the most western end of Pig Island and then due south to the closest point of land on Great Wass Island.
- (14) Gouldsboro & Dyer Bays
North of a line drawn from the eastern most tip of Young's Point, Corea, to the western most tip of Sheep Island, then following the shore to the most eastern point of Sheep Island to the most southern tip of Sally Island, the following the shore to the most eastern point of Sally Island to the most southern tip of Eastern Island, the following the shore to the most eastern point of Eastern Island to the southern most tip of The Castle and then continuing in a easterly direction to Bear Cove on Petite Manan Point, Stueben at Latitude 44° 24'25.65" N Longitude 67° 54'24.98" W including all of Gouldsboro and Dyer Bays.
- (15) Damariscotta River
North of a line drawn from Emerson Point at the southern most tip of Ocean Point in the town of Boothbay, easterly to Thrumcap Island, then northerly to the southern tip of Rutherford Island, South Bristol.
- (16) Somes Sound
North and West of a line drawn from the southern most tip of Sargent Point, Northeast Harbor, southwesterly to the most northern tip of Kings Point, Southwest Harbor, including all of Somes Sound.

Basis Statement

Chapter 11.22 2012-13 Closures (14) Gouldsboro & Dyer Bay (15) Damariscotta River (16) Somes Sound. Emergency regulations

Justification:

Maine scallop landings have declined precipitously from a peak of nearly 4 million pounds in 1980-1981 to less than a half million pounds each year since 2001 (Figure 1). In 2009, due to the fact that scallop populations throughout the state were at extremely low levels, the Department enacted a series of Closed Areas to allow the resource to rebuild. These Closed Areas, now called Limited Access Areas, reopened this season to harvest. In 2011, all the Limited Access Areas were surveyed to provide a biomass estimate of the harvestable poundage of scallops available in each area. As part of the rebuilding plan, a trigger mechanism was included during rulemaking that would ensure that the biomass in these Limited Access Areas would be sustainably harvested to ensure rebuilding can continue while allowing for a limited fishery to occur in these areas. The trigger mechanism was designed to close the Limited Access Areas when there was a likelihood that 30-40% of the harvestable biomass had been removed. Based on Marine Patrol, Sea Sampling and Port Sampling observations as well as direct industry reports, the 30-40% threshold has been exceeded in three of the Limited Access Areas (LAA). The areas that have experienced the highest amount of fishing pressure have been depleted. These areas include Gouldsboro & Dyer Bays, Damariscotta River and Somes Sound. These closures are needed to ensure that there is enough biomass left to provide the critical mass of scallops for successful recruitment and spawning, thus ensuring that rebuilding continues.

In the Gouldsboro Bay area, sea sampling observations made on January 9th indicate that there has been a 43% decrease in Catch Per Tow Hour since the start of the season. Industry and Marine Patrol reports for January 10th, 16th and 17th indicate a further decrease in catch rates, with 75% of vessels remaining in the area at noon on January 16th, as they had not even reached the reduced daily limit of 15 gallons. This compares unfavorably to when the area first opened (December 4th) when the majority of boats were catching their 20 gallon limit by 10am. This area has experienced intense fishing pressure, with approximately 50 vessels in the area over the past four LAA days. The trigger threshold for this LAA is 23,727 lbs (30%) of an estimated 80,200 lbs of harvestable biomass. The trigger threshold has been exceeded, as it is estimated that at least 41,635 lbs. have been removed to date. An immediate conservation closure of the Gouldsboro Bay LAA is needed. In addition, an immediate conservation closure of the adjacent Dyer Bay area is also needed based on industry reports that this area has been overfished. There is a high presence of small scallops which require protection so they are able to recruit up to the fishery to provide harvest opportunities in the future.

In the Damariscotta River, sea sampling, port sampling and Marine Patrol observations in combination with direct industry reports indicate that this area has been overfished and requires an immediate conservation closure. Since opening to dragging on January 9th, there have been at least 15-20 vessels fishing this small LAA area at the mouth of the river with some vessels not able to reach their reduced daily landings limit of 15 gallons on January 16th. Above the LAA, the rest of the Damariscotta River has been subjected to heavy fishing effort over the past three years while the lower portion and outer area have been closed for rebuilding. The fall 2011 DMR Survey indicated a high presence of sublegal scallops around Inner Heron Island, which require protection to ensure these scallops have the ability to recruit up to the fishery in subsequent fishing years. Therefore, an immediate conservation closure of the entire Damariscotta River is needed, while the remaining portion of the Damariscotta/Sheepscot LAA will remain open for harvest opportunities.

The Somes Sound and Greening Island Area of the Mount Desert Island LAA have been the focus of the local drag and dive fleets this season as it is the only protected portion of this LAA on foul weather days. This area contains a high concentration of the available biomass for the entire LAA. Industry and Marine Patrol reports indicate at least a 50% decrease in Catch Per Unit Effort for draggers, while divers indicate that 90% of the harvestable biomass available to them has been harvested. Therefore, an immediate conservation closure of the Somes Sound and Greening Island Area is needed, while the lower portion of the Mount Desert Island LAA will remain open for harvest opportunities.

The Department is concerned that continued harvesting during the remainder of the 2012/2013 fishing season in the Gouldsboro Bay LAA, the Somes Sound portion of the Mount Desert Island LAA and the Damariscotta River portion of the Damariscotta/Sheepscot Limited Access Area will deplete the harvestable biomass far beyond the 30-40% goal for removal. Continued harvesting would also damage sublegal scallops that could be caught during subsequent fishing seasons, as well as reduce any remaining broodstock that is essential to a recovery. In addition, due to overfishing and the high presence

of sublegal scallops in Dyer Bay, continued harvesting during the remainder of the 2012/13 season may cause damage to these scallops that could be caught in subsequent fishing seasons. An immediate conservation closure is necessary to reduce the risk of unusual damage and imminent depletion of the Gouldsboro Bay LAA, the Somes Sound portion of the Mount Desert Island LAA, the Damariscotta River portion Damariscotta/Sheepscot LAA as well as Dyer Bay.

For these reasons, the Commissioner hereby adopts an emergency closure of Maine's scallop fishery Gouldsboro & Dyer Bay, Damariscotta River and Somes Sound to protect against unusual damage and imminent depletion as authorized by 12 M.R.S.A. §6171(3).

In accordance with 5 M.R.S.A. §8052, sub-§5-A, a statement of the impact on small business has been prepared. Information is available upon request from the DMR Commissioner's office, State House station #21, Augusta, Maine 04333-0021, telephone (207) 624-6553.

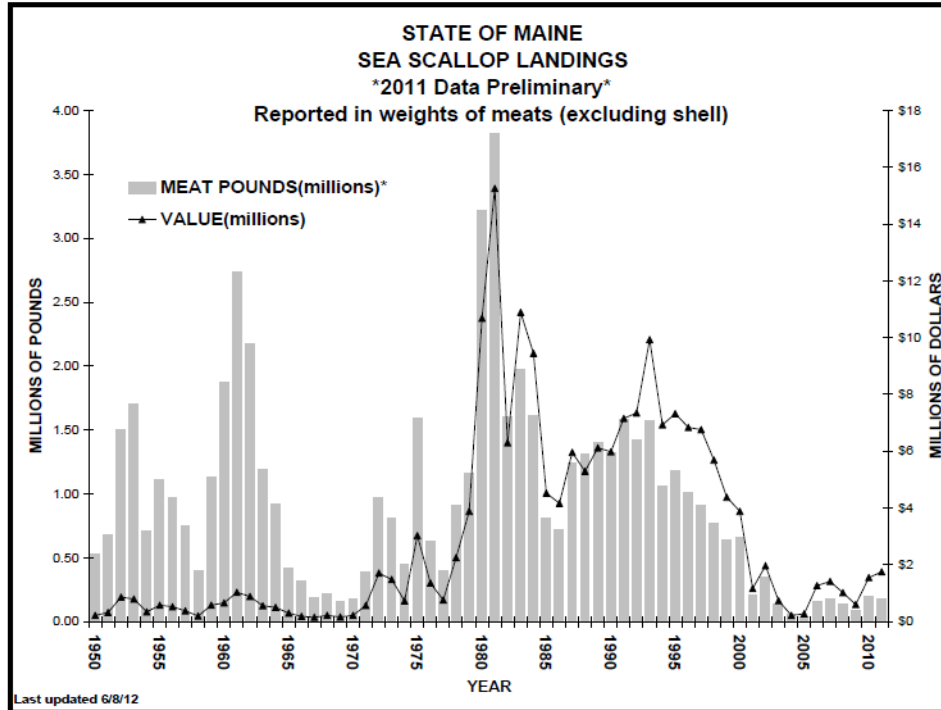


Figure 1. Maine scallop landings from 1950 to 2011.